



STATE OF HAWAII
DEPARTMENT OF TAXATION

January 6, 2000

TAX ADVISORY ON ACT 70, SESSION LAWS OF HAWAII 1999
GENERAL EXCISE TAX EXEMPTION FOR EXPORTED SERVICES AND CONTRACTING
AND
USE TAXATION OF IMPORTED SERVICES

Beginning January 1, 2000, Act 70, Session Laws of Hawaii 1999 (Act 70), exempts services and contracting (architects, engineers) exported outside Hawaii from the general excise tax (GET), and imposes the use tax on imported services. "Exported services" mean services that are performed wholly within the State but consumed outside the State. "Imported services" mean services that are performed wholly outside of the State but consumed within the State.

GET Exemption for Exported Services and Contracting

In general, Act 70 exempts services or contracting exported outside Hawaii from the GET. These exemptions increase the global competitiveness of Hawaii businesses and provides parity between the tax treatment of exported services and contracting and exported tangible personal property (currently exempt from the GET). Under prior law, services performed in Hawaii were subject to the GET even if exported outside Hawaii; contracting is subject to the GET if the project is located in Hawaii.

Act 70 provides a GET exemption for services and contracting performed in Hawaii, for a customer located outside Hawaii where the services or contracting are for resale, consumption, or use outside Hawaii, the services or contracting would be subject to the GET at the 4% rate, and the customer provides a certificate certifying that the services or contracting will be resold, used, or consumed outside Hawaii.

The exported services exemption also applies to "bundled" exported service or contracting transactions. That is, services or contracting work performed in Hawaii for another Hawaii service or contracting business for resale, consumption, or use outside Hawaii also is exempt from the GET.

Use Tax on Imported Services

The new use tax on imported services levels the "playing field" between Hawaii service providers subject to the GET performing work for Hawaii customers and unlicensed out-of-State service providers not subject to the GET performing work for Hawaii customers. This new use tax on imported services also provides parity between the tax treatment of imported tangible personal property (subject to the use tax under current law) and services. Under prior law, imported services were not subject to the use tax.

Act 70 imposes the use tax on the "value" of services, including professional services, that are performed by an unlicensed seller at a point outside of Hawaii, but which are imported for resale, consumption, or use in Hawaii. Analogous to the use taxation of tangible personal property, the new use tax on imported services is imposed at different rates (0%, ½%, 4%) on the importer or purchaser depending upon how the importer or purchaser "uses" (e.g., resells, consumes, uses, etc.) the imported services.

How to determine what use tax rate the imported services will be subject to:

1) If the imported services become an "identifiable element" (excluding overhead) of a product or service which the importer or purchaser resells at the ½% GET rate, the use tax rate imposed on the imported services is 0%. (The importer or purchaser in this case is licensed for GET purposes and is either engaged in a service business or calling or a manufacturer.)

Example: A Hawaii software company contracts a Japanese software company to develop part of the software

to be incorporated in a computer game. The computer games will be manufactured by the Hawaii company and sold at wholesale to Hawaii retailers. The Hawaii company is not subject to the use tax on the imported services of the Japanese software company, but is subject to the ½% GET on the sales of the computer games to the Hawaii retailers.

2) If the imported services become an “identifiable element” (excluding overhead) of a product, service, or construction project which the importer or purchaser resells at the 4% GET, the use tax rate imposed on the imported services is ½%. (The importer or purchaser in this case is licensed for GET purposes and is either engaged in a service business or calling, a manufacturer, or a contractor.)

Example: A Hawaii attorney is hired by a client in a medical malpractice lawsuit. The attorney hires a California doctor to review medical reports and hospital records that will be used during the litigation. The Hawaii attorney is subject to the use tax rate of ½% on the value of the imported services of the California doctor and 4% GET on the gross income received from the client.

3) If the imported services are consumed by the importer or purchaser, including “overhead,” and for all other cases that do not qualify for the 0% or ½% use tax rate, the use tax rate imposed on the imported services is 4%. (The importer or purchaser in this case can be any entity or person located in Hawaii, including individuals who do not have a GET license.)

Example: A Hawaii financial institution outsourcing its credit card administration and collection services to a mainland company is subject to the use tax rate of 4%.

An exemption from the use tax is provided for imported services which are sold for resale, consumption, or use by a “foreign customer” located outside Hawaii. A “foreign customer” is defined as a nonresident person who: (1) is not subject to the GET; (2) is not physically present in Hawaii for more than 30 days in the 6 months prior to entering into a written exported contracting or services agreement with a person who is licensed for GET purposes and is engaged in contracting or in a service business; and (3) is the sole recipient of the exported contracting or services provided through a person in Hawaii who is licensed for GET purposes and is engaged in contracting or in a service business.

There is no new form to report this new use tax on imported services. Those taxpayers that have a GET license will report the applicable tax in the use tax section on their GET returns (refer to your GET returns booklets for specific reporting instructions). For those taxpayers that owe use tax but do not have a GET license, simply send to the Department a check or money order for the amount of the use tax due together with a letter containing a description of the services imported, the value of the imported services, and the calculation of the use tax.

Additional Information

If you have any questions regarding Act 70, please contact any of the district offices of the Department of Taxation listed below. Detailed information on Act 70 is also available on the Department’s website under “Legislative Initiatives” at: <http://www.state.hi.us/tax/tax.html>

OFFICE LOCATIONS AND TELEPHONE NUMBERS

Oahu District Office
830 Punchbowl Street
P.O. Box 1425
Honolulu, HI 96806-1425
Telephone:
(808) 587-4242
Toll-Free 1-800-222-3229
Fax: (808) 587-1488

Maui District Office
54 South High Street, #208
P.O. Box 1427
Wailuku, HI 96793-6427
Telephone: (808) 984-8500
Fax: (808) 984-8522

Hawaii District Office
75 Aupuni Street, #101
P.O. Box 937
Hilo, HI 96721-0937
Telephone: (808) 974-6321
Fax: (808) 974-6300

Kauai District Office
3060 Eiwa Street, #105
P.O. Box 1687
Lihue, HI 96766-5687
Telephone: (808) 274-3456
Fax: (808) 274-3461

This tax advisory is not intended to be a complete statement of the law. Subsequent developments in the law

(legislation, rules, cases, etc.) should be consulted.